

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 12-0126 MV/WDS
CR 96-0580 MV

ROGER DALE YEADON,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant's Motion for Relief from a Judgment or Order (CV Doc. 4; CR Doc. 88). In the earlier order, the Court denied Defendant's Nunc Pro Tunc Motion to Correct Judgment. The first motion asked the Court to order Defendant's return to state custody and recommend "that the B.O.P. retroactively designate[] the state facility as the place to serve his federal sentence." The new motion asks for nearly identical relief, as well as an amended criminal judgment stating the Court's intention that Defendant's sentences are to be served concurrently. The Court will deny the motion.

The Court may not enter an amended judgment at this time. "We have explained that ' '[a] district court is authorized to modify a [d]efendant's sentence only in specified instances where Congress has expressly granted the court jurisdiction to do so.' ' " *United States v. Price*, 438 F.3d 1005, 1007 (10th Cir. 2006) (citations omitted). Defendant cites to no express authority for modifying his sentence at this time. More importantly, of course, this requested relief is moot, because the criminal judgment (CR Doc. 80, p. 8) clearly states that Defendant's sentences are to run concurrently.

Nor does Defendant's motion provide grounds for other relief from the prior order. As previously noted, Defendant's situation is specifically contemplated by the BOP's referenced

Program Statement. Because this Court ordered concurrent sentences, Defendant's concerns must be addressed to prison officials. If Defendant remains dissatisfied at the conclusion of administrative proceedings and wishes to pursue a claim "that the execution of his sentence violates federal law or the Constitution," *United States v. Miller*, 594 F.3d 1240, 1242 (10th Cir. 2010), he may then seek relief in a petition under 28 U.S.C. § 2241 in the district where he is incarcerated, *see United States v. Buck*, No. 99-2129, 1999 WL 811685, at **2 (10th Cir. Oct. 12, 1999). The Court declines Defendant's request to recommend that the BOP designate any specific location for Defendant's custody.

IT IS THEREFORE ORDERED that Defendant's Motion for Relief from a Judgment or Order (CV Doc. 4; CR Doc. 88) is DENIED.



UNITED STATES DISTRICT JUDGE